26-1021

In the United States Court of Appeals
FOR THE SECOND CIRCUIT

CHARLES DOHERTY, individually and as representatives on behalf of a class of similarly situated persons, MICHAEL J. NOEL, individually and as a representative on behalf of a class of similarly situated persons,

Plaintiffs – Appellees,

v.

BRISTOL-MYERS SQUIBB COMPANY, BRISTOL-MYERS SQUIBB COMPANY PENSION COMMITTEE, STATE STREET GLOBAL ADVISORS TRUST COMPANY, BRISTOL-MYERS SQUIBB COMPENSATION AND MANAGEMENT DEVELOPMENT COMMITTEE,

Defendants – Appellants,

JOHN DOE 1-10,

Defendant.

On Appeal from the United States District Court for the Southern District of New York, No. 24-cv-6628, Hon. Margaret M. Garnett

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

MARIEL A. BROOKINS
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062-2000

Counsel for Amicus Curiae the Chamber of Commerce of the United States of America

MICHAEL E. KENNEALLY
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000

COLLEEN A. GALLAGHER
MORGAN, LEWIS & BOCKIUS LLP
2222 Market St.
Philadelphia, PA 19103

CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, the Chamber of Commerce of the United States of America states that it is a non-profit tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Many of the Chamber's members are employers that sponsor retirement plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). For this reason, the Chamber regularly files amicus briefs in ERISA cases that raise important and often recurring issues for plan sponsors. The Chamber is committed to ensuring that ERISA remains the carefully balanced statute Congress designed it to be—not one in which unwarranted "litigation expenses[] unduly discourage employers from offering . . . benefit plans in the first place." *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996). Unfortunately, the district court permitted this putative

[1] No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or person other than the amicus curiae, its members, or its counsel contributed money that was intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

class action to proceed based on a theory of Article III standing that conflicts with Supreme Court and Second Circuit precedent. The Chamber urges this Court to reverse the district court's decision.

INTRODUCTION AND SUMMARY OF ARGUMENT

In a defined benefit pension plan, "retirees receive a fixed payment each month, and the payments do not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions." *Thole v. U.S. Bank N.A.*, 590 U.S. 538, 540 (2020). In *Thole*, the Supreme Court made clear that "[t]here is no ERISA exception to Article III." *Id.* at 547. And it held that under ordinary Article III principles, participants in a defined benefit plan lacked standing when they had "received all of their vested pension benefits so far" and were "legally entitled to receive the same monthly payments for the rest of their lives." *Id.*

The same is true of Plaintiffs here. Yet contrary to *Thole*'s authoritative holding, Plaintiffs filed this action as part of a wave of new ERISA lawsuits challenging a common and expressly authorized transaction. ERISA expressly permits an employer to terminate its defined benefit plan and transfer its pension obligations to an insurer through an annuity buyout transaction (sometimes called a "pension risk transfer" or "PRT") in which the sponsor purchases "irrevocable commitments from an insurer to provide all benefit liabilities under the plan." *See* 29 U.S.C. § 1341(b)(3)(A)(i); *see also* 29 C.F.R. § 4001.2 (defining "irrevocable commitment"

as "an obligation by an insurer to pay benefits to a named participant or surviving beneficiary"). After these transactions, participants and beneficiaries continue to receive and remain entitled to receive the same benefit payments, but the payments come from the insurer rather than the plan sponsor. In such circumstances, *Thole* controls: "[w]inning or losing this suit would not change the plaintiffs' monthly benefits," so they "have no concrete stake in this dispute and therefore lack Article III standing." 590 U.S. at 547.

The district court found *Thole* inapplicable primarily because Plaintiffs surmise that someday they might not receive the benefits to which they are entitled. In the court's view, Plaintiffs alleged enough of a risk that their annuity provider Athene "could default on its contractual obligations." SA11. That was error. Under Supreme Court precedent, an Article III injury must be actual or imminent, not conjectural or hypothetical. And a potential future injury must be certainly impending. It is not enough to allege a mere possibility of future injury based on an attenuated chain of possibilities.

But that is all that Plaintiffs allege here. PRTs are a common and secure way to provide the benefits that employees were promised through a defined benefit pension plan. They have provided retirement payments to millions of Americans. And, in over 30 years, not one PRT annuity provider has defaulted on its obligations. That is hardly surprising, because the last 30 years have seen the introduction of many

safeguards to ensure that PRTs providers do not default. Insurers, including PRT providers, are highly regulated under state insurance laws to ensure they have sufficient capital to meet their obligations. And PRT annuity providers are often required to maintain funds for particular PRTs in a separate account from their general assets, although general accounts remain available for satisfying PRT annuity obligations as well. Many annuity providers also buy insurance of their own ("reinsurance") to provide an additional layer of security. And state guaranty associations provide a backstop beyond all that. All these layers of protection would have to fail before individuals like Plaintiffs would suffer an actual diminution of their promised retirement payments, so it is not surprising that there has not been such a failure in three decades.

Enforcing the requirements of Article III standing is not merely an academic exercise. On the contrary, motions to dismiss for lack of standing are a crucial mechanism for ensuring that meritless ERISA class action litigation does not impose massive unwarranted costs on employers who have chosen to sponsor ERISA plans. The Supreme Court and this Court have emphasized that ERISA strives for a careful balance to ensure that litigation risk and the massive legal expenses that are required to defend ERISA class actions do not deter employers from agreeing to offer em-

ployee benefits in the first place. Allowing unfounded lawsuits like this one to proceed would have precisely that harmful effect. The Court should avoid that harm and reverse the denial of Defendants' motion to dismiss.

ARGUMENT

I. The complaint should have been dismissed for lack of standing because Plaintiffs have not plausibly pleaded an Article III injury.

As Defendants detail in their opening brief, Plaintiffs have failed to satisfy the minimum prerequisites for Article III standing—especially injury in fact and traceability—either on a theory of existing harm or on a theory of potential future harm.

A. Start with existing harm. The Supreme Court's decision in *Thole* makes this an easy issue. It explains that injury in fact in the context of a defined benefit plan cannot be grounded in an analogy between ERISA plans and common law trusts because, under ERISA, defined benefit plan participants have no equitable or property interest in the plan's assets. 590 U.S. at 542-43. Nor do participants stand in the shoes of the plan, in the manner of assignees, guardians, receivers, or executors, because participants are not legally or contractually appointed to represent the plan. The usual principles of Article III apply with full force in ERISA cases. And when participants have received all the benefits they were promised and remain "legally and contractually entitled" to those benefits going forward, they have not suffered a concrete and particularized actual injury to their legally protected interests. *Id.* at 540, 547; *see also* Defs. Br. at 26-36.

Nor can Plaintiffs here base standing on the loss of ERISA coverage. *Contra* SA15-17. Such a theory flunks the second standing prerequisite, traceability, which requires that the plaintiff's injury be "fairly traceable to the *challenged conduct of the defendant*." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (emphasis added). As Defendants explain, Plaintiffs are not challenging the decision to terminate their plan and select any annuity provider whatsoever; they are challenging the specific decision to select Athene as the provider. Defs. Br. at 36-41. But the loss of ERISA coverage (even assuming it could be an injury to a legally protected interest) is not traceable to the decision to select Athene instead of a different provider—the challenged action here. Nor may Plaintiffs mix-and-match their theories of standing and liability by basing their alleged standing on a decision other than the decision they challenge. Because "standing is not dispensed in gross," ERISA plaintiffs must satisfy the three standing requirements "for each claim that [Plaintiffs] press and for each form of relief that they seek." *Duke v. Luxottica U.S. Holdings Corp.*, 167 F.4th 16, 26 (2d Cir. 2026) (quoting *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021)); *see also id.* at 29 (finding a lack of standing to pursue a remedy that would not actually redress the ERISA participant's injury in fact). They cannot do so here for their claim that selecting Athene violated ERISA.

B. Unable to support standing based on any valid existing harm, Plaintiffs heavily rely on a theory of potential future harm. But in doing so, they disregard the

requirements for standing premised on future harm. When the asserted injury is not an "actual" injury, it must at least be "imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S. at 339 (citation omitted). The Supreme Court has long instructed that the concept of "imminent" injury must not be "stretched" too far. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 565 n.2 (1992). "Allegations of possible future injury do not satisfy the requirements of Art. III." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990). Instead, "[a] threatened injury must be 'certainly impending' to constitute injury in fact." *Id.* (citation omitted).

In *Clapper v. Amnesty International USA*, 568 U.S. 398, 410 (2013), the Court reaffirmed that future harm must be "certainly impending" and rejected an "objectively reasonable likelihood" test that this Court had adopted. *Clapper* held that a standing theory that "relies on a highly attenuated chain of possibilities[] does not satisfy the requirement that threatened injury must be certainly impending." *Id.* More recently, the Court has explained that the requirement of "actual or imminent, not speculative" injury means "that the injury must have already occurred or be likely to occur soon." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024). A bare risk of injury in the distant future does not meet that test.

A "highly attenuated chain of possibilities" is an apt description of Plaintiffs' theory of future harm. That theory certainly does not establish that a future loss of benefits is certainly impending or likely to occur soon. On the contrary, as discussed

next, it would not be plausible to find even an "objectively reasonable likelihood"—were that the governing standard—of a nonpayment of Plaintiffs' promised retirement benefits given PRTs' track record and many safeguards.

II. PRTs are a time-tested and widely accepted alternative to maintaining a defined benefit plan.

After a PRT, the insurance company from which the annuity is purchased becomes contractually responsible for paying benefits to plan participants and beneficiaries. There is nothing novel about this type of arrangement. On the contrary, annuities have played a significant role in the nation's private pension system for a century. *See* James M. Poterba, Nat'l Bureau of Econ. Res., *The History of Annuities in the United States*, at 13-14 (1997).[2] And as the U.S. Department of Labor explained in recent amicus briefing in another Athene PRT case, PRTs "have a proven track record of guaranteeing participants' and beneficiaries' benefits while allowing employers to effectively steward company finances." Br. for the U.S. Sec'y of Labor as Amicus Curiae in Support of the Appellant and Reversal at 3, *Konya v. Lockheed Martin Corp.*, No. 25-2061 (4th Cir. 2025), ECF No. 55-1 ("DOL *Lockheed* Br.").[3]

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[2] https://www.nber.org/system/files/working_papers/w6001/w6001.pdf.

[3] https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2026/01/EBSA20260066.pdf. The *Lockheed* appeal presents the same basic standing issue as this case, and the Department of Labor's amicus brief is properly the subject of judicial notice. *See McCulloch Orthopaedic Surgical Servs., PLLC v. Aetna Inc.*, 857 F.3d 141, 148 n.4 (2d Cir. 2017) (taking notice of Department brief filed in "companion" ERISA case and adopting Department's position).

Over recent decades, single-employer plans satisfied millions of participants' pension obligations via PRTs, amounting to more than $52 billion in premiums in 2022 alone. *See* U.S. Dep't of Labor, *Department of Labor Report to Congress on Employee Benefits Security Administration's Interpretive Bulletin 95-1*, at 5 (June 2024).[4] And since the early 1990s, there has not been "a single default or failure of any [PRT] annuity." *Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1*, at 1 (Aug. 29, 2023) ("2023 ERISA Advisory Council Statement").[5]

Defined benefit plans cannot claim the same record of success. Since the 2008 financial crisis, close to a thousand of these plans have failed. *See* Nat'l Org. of Life & Health Ins. Guaranty Ass'ns, *Consumer Protection Comparison: The Federal Pension System and the State Insurance System*, at 17-18 (May 22, 2016) ("2016 NOLHGA Report").[6] And while "no one has lost a penny under a PRT annuity" in over 30 years, participants and beneficiaries who remained in employer-run pension plans have lost at least $8.5 billion because their employers were not able to fully

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[4] https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/secure-2.0/report-to-congress-on-interpretive-bulletin-95-1.pdf.

[5] https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/statement-regarding-interpretive-bulletin-95-1.pdf.

[6] https://www.athene.com/binaries/content/assets/ausa-assets/advocacy/national-organization-of-life-and-health-insurance-guaranty-associations_pension-report.pdf.

fund their plans and the minimum guarantee of the Pension Benefit Guaranty Corporation ("PBGC") did not cover the full funding shortfall. 2023 ERISA Advisory Council Statement at 4. Meanwhile, the prevalence of defined benefit plans "has decreased materially over time." 2016 NOLHGA Report at 6. As PRT annuity purchases boomed between 2000 and 2022, the number of single-employer defined benefit plans dwindled from roughly 35,300 (in 2000) to 23,800 (in 2022). *See* Pension Benefit Guar. Corp., *Pension Insurance Data Tables 2023*, at Table S-21 (2023).[7]

Considering these facts, it is no surprise that federal regulators support PRTs as appropriate alternatives to defined benefit plans. For example, one of the PBGC's own directors has acknowledged that "a defined benefit plan with a PBGC guarantee [is not] necessarily safer than an insurance company annuity." U.S. Dep't of Labor, ERISA Advisory Council, *Private Sector Pension De-risking and Participant Protections*, at 12 (Nov. 2013).[8] To put it simply, PRTs "have a proven track record of guaranteeing participants' and beneficiaries' benefits while allowing employers to effectively steward company finances." DOL *Lockheed* Br. at 3.

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[7] https://www.pbgc.gov/sites/default/files/documents/2023-pension-data-tables.pdf.

[8] https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/about-us/erisa-advisory-council/private-sector-pension-de-risking.pdf.

III. Overlapping protections ensure that PRT annuitants will receive all benefits due.

In finding a substantial risk that Athene "could" default such that Plaintiffs would not receive their promised benefits, SA11, the district court ignored the panoply of protections that, taken together, safeguard against default and ensure that annuitants in Plaintiffs' position will receive all benefits due. These key protections include (A) solvency regulation and oversight under state insurance law; (B) the segregation of assets used to fund annuity payments through a "separate account" structure; (C) reinsurance; and (D) backing by State Guaranty Associations in the event of the insurer's insolvency.

A. State insurance regulation and oversight

The district court expressed concern that the Athene PRT "ejected Plaintiffs from the ambit of ERISA and its protections." SA15. That one-sided perspective ignores the extensive role that state law plays in protecting individuals in the insurance markets.

Insurance is a business to which state governments have "long had a 'special relation.'" *Cal. Auto Ass'n v. Maloney,* 341 U.S. 105, 109 (1951). In 1945, Congress enacted the McCarran-Ferguson Act to "ensure" that states would "have the ability to tax and regulate the business of insurance." *Grp. Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 217-18 (1979); 15 U.S.C. § 1012(a)-(b). And ERISA itself recognizes the important role of state insurance regulation. While ERISA broadly

preempts state laws that relate to ERISA plans, 29 U.S.C. § 1144(d), it carves out a preemption exception for state insurance regulations, *id.* § 1144(b)(2)(A). *See generally FMC Corp. v. Holliday*, 498 U.S. 52, 60-61 (1990).

Today, insurance is regulated by insurance commissioners and directors in each of the U.S. states and territories. These individuals are responsible for overseeing the financial health of insurance companies domiciled within their respective states. They also work together through the National Association of Insurance Commissioners ("NAIC") "to establish standards and best practices" and "coordinate regulatory oversight." NAIC, *NAIC 2025 Annual Report*, at 6 (2025).[9]

The "key tenet" of state insurance regulation is to protect consumers—"including those who have their pension payments annuitized through a PRT transaction—from the risk that an insurer may default on its financial obligations." Nat'l Org. of Life & Health Ins. Guaranty Ass'ns, *Pension Risk Transfers*, at 6 (2025) ("2025 NOLHGA Report").[10] States deliver this protection "through a comprehensive and interconnected set of laws and regulations that has served insurance consumers well for decades and can be expected to do so under any reasonably foreseeable circumstances in the future." *Id.*

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[9] https://content.naic.org/sites/default/files/annual-report-2025.pdf.

[10] https://nolhga.com/wp-content/uploads/2025NOLHGAPRTReport.pdf.

Consistent with model regulations, formulas, and principles propounded by the NAIC, insurers are subject to robust capital and reserve requirements.[11] For example, states require insurers to maintain "a statutory minimal level of capital" calculated by way of the NAIC's "risk-based capital" ("RBC") formula. U.S. Dep't of Treasury, *The Impact of the International Insurance Capital Standard on Consumers and Markets in the United States*, at 6-7 (Nov. 2024).[12] If an insurer fails to maintain the requisite level of capital, state regulators can intervene—and in some cases are even required to "take over management"—to address any risk of insolvency. 2025 NOLHGA Report at 7. States also require insurers to maintain adequate reserves to cover their expected obligations—amounts that are calculated using NAIC's "principles-based reserving" methodology. *Id.* at 8.

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[11] *See* NAIC, Capital and Surplus Requirements on Risk (Spring 2024), https://content.naic.org/sites/default/files/model-law-chart-cf-20-capital-and-surplus-requirements-on-risks.pdf (showing that all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have adopted NAIC's model "capital and surplus requirements on risks"); NAIC, *Principle-Based Reserving* (Aug. 1, 2025), https://content.naic.org/insurance-topics/principle-based-reserving (noting that all NAIC-accredited members have implemented "principle-based reserving").

[12] https://home.treasury.gov/system/files/311/ICS_Impact_Report_final.pdf. The RBC formula "measures the minimum acceptable level of capital necessary for a specific insurer to support its business in view of its size and risk profile." 2025 NOLHGA Report at 7.

Beyond setting minimum capital and reserve requirements, states also consistently monitor insurers' solvency. State laws "set[] parameters over how an insurer can invest the funds it holds" and "regulate transactions between insurers and their affiliates and subsidiaries," among others. *Id.* at 7. All medium and large annuity providers must perform and file an annual "Own Risk Solvency Assessment" with state regulators that assesses their risk management and solvency forecasts under various conditions. *Id.* at 8-9. And states also require an actuarial opinion to further ensure that they have sufficient assets to support future obligations. *See* Am. Academy of Actuaries, *Asset Adequacy Analysis*, at 81 (Sept. 2024).[13]

B. Separate account

On top of a robust body of state insurance law, many PRT annuitants enjoy an additional layer of protection: "a fully funded 'separate account' devoted solely to paying their benefits." 2025 NOLHGA Report at 5 n.4. As part of a PRT, a pension plan can require an annuity provider to segregate its assets devoted to pension liabilities in an account separate from its "general account." *Id.* The plan thereby can ensure that those assets are shielded from the general account's liabilities. State laws prohibit the provider from using those assets "for any purpose other than to pay the liabilities for which the separate account was established," while also

[13] https://actuary.org/wp-content/uploads/2025/03/Life-PracticeNote-2017AATUpdate.pdf.

ensuring the provider "remains fully liable for all the annuity benefits it has guaranteed regardless of whether the separate account is sufficiently funded." *Id*. In other words, both general *and* separate accounts would have to become insolvent for the provider to default on its obligations to retirees—further underscoring the speculative nature of Plaintiffs' asserted future injury. Plaintiffs received these protections when BMS executed the PRT with Athene Iowa and Athene New York. *See* JA50 (Compl. ¶ 134); Defs. Br. at 46-47.

Plaintiffs object to Athene's supposedly "risky investment strategies." JA47 (Compl. ¶¶ 122). But Plaintiffs' general allegations of riskiness never grapple with the distinct (and distinctly more rigorous) regulations and oversight that govern the way Athene invests assets in its separate account—the account dedicated solely to supporting their retirement benefits. As just one example, Athene Iowa was required to submit a "plan of operation" for its separate account for approval by Iowa's state insurance commissioner before it issued any group annuity contracts. *See* Iowa Admin. Code §§ 191-96.1 to 96.12. The plan of operation had to include a "description of the allowable investment parameters (such as objectives, derivative strategies, asset classes, quality, duration and diversification requirements applied to the assets held within the segregated portfolio)" and an explanation of "how the investments in the segregated portfolio reflect provision for benefits insured by the contract and how the contract value and market values and the rates of return may be affected by

changes in the investment returns of the segregated portfolio." *Id*. § 191-96.5. Plaintiffs do not allege that Athene Iowa or Athene New York failed to comply with their states' separate account requirements, nor do Plaintiffs allege that state regulators identified anything concerning about their investment plans. Plaintiffs' conclusory allegations of "risky" investments ignore the close regulation of Athene's separate account investments.

C. Reinsurance

Reinsurance—basically insurance for insurers—provides yet another layer of protection for annuitants like Plaintiffs. Reinsurance is a common feature of PRTs. 2023 ERISA Advisory Council Statement at 10. When the assets supporting an annuity are reinsured, both the original insurer *and* the reinsurer would have to fail before annuitants' retirement benefits could be impacted. "The annuity issuer selected by the plan fiduciary remains 100% liable for all annuities payments"; "reinsurance does not change that obligation." *Id*. at 2.

Here, Plaintiffs acknowledge that Athene has contracted for reinsurance, although they vaguely critique Athene's reinsurers for being based in Bermuda. JA40-41 (Compl. ¶ 101). Plaintiffs never allege facts to plausibly suggest that the reinsurance protections would fail in the (unlikely) event that Athene were to default first. *See* Defs. Br. at 53-55.

D. State Guaranty Associations

State Guaranty Associations ("SGAs") act as a final backstop for PRT annuitants' benefits. Every state has an SGA to protect its residents, and every licensed insurance company that writes annuity business in that state must become a member of that state's SGA. 2025 NOLHGA Report at 11. In the "rare" case where an insurer fails financially and is ordered to liquidate, an SGA will "step into the shoes" of the insurer "to continue paying claims pursuant to state law." *Id.* All state SGAs cover up to $250,000 of the present value of PRT annuity benefits. *Id*. Ten SGAs offer even more expansive coverage, ranging from $300,000 to $500,000. *Id.* Yet given all the structural protections described above, SGA coverage is rarely invoked. Indeed, since SGAs were first created in the 1980s, only 45 annuity providers—mostly "small writers of business" that could not have supported a PRT transaction—have failed. *Id.* at 7. And with a solitary exception in the early 1990s, "none have included PRT annuities." *Id*.

Plaintiffs assert that SGAs are less protective than the PBGC. JA33 (Compl. ¶ 68). But they offer no factual allegations to connect that general, conclusory assertion to a real risk that SGAs would fail to fully cover Plaintiffs' benefits. Defs. Br. at 55-57; *see also* 2023 ERISA Advisory Council Statement at 4 ("NOHLGA's 2016 study of this topic shows that there is no material difference between the PBGC protection and SGAs."). If anything, the historical record tells a different story.

While no retiree has lost any pension benefits as a result of a PRT backed by SGAs in three decades, a study of single-employer defined benefit pensions taken over by the PBGC found that 16% of plan participants saw a reduction in benefits, with an average loss of 24% of their promised benefits. Pension Benefit Guaranty Corporation, *PBGC's Single Employer Guarantee Outcomes*, at i, 16 tbl.11 (May 2019).[14] SGAs provide yet another reason to reject Plaintiffs' theory of potential future harm as "a highly attenuated chain of possibilities." *Clapper*, 568 U.S. at 410.

IV. Article III requirements help guard against baseless ERISA litigation, which harms employers and employees alike.

Apart from being wrong on the law, Plaintiffs' theory of standing threatens to inflict real practical harms. These harms will likely be felt not just by employers but ultimately by employees as well.

The Supreme Court has repeatedly emphasized that a fundamental purpose of ERISA is to encourage employers to make the voluntary decision to create employee benefit plans and offer robust benefits through them. "Nothing in ERISA requires employers to establish employee benefits plans." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Instead, ERISA furthers "the public interest in encouraging the formation of employee benefit plans," leaving the decision whether to sponsor a plan up to employers. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). Given the

[14] https://www.pbgc.gov/sites/default/files/2016-single-employer-guaranty-study.pdf.

statute's reliance on the voluntary provision of benefits, the Supreme Court has "recognized that ERISA represents a 'careful balancing between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans.'" *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citation omitted). In particular, Congress aimed to avoid having unwarranted "litigation expenses" deter employers from supporting ERISA plans in the first place. *Id.* (quoting *Varity Corp.*, 516 U.S. at 497).

As the Department of Labor has recognized, the "current PRT litigation blitzkrieg" threatens to upend this "delicate calibration." DOL *Lockheed* Br. at 26. That view is correct. Creating and running a pension plan for thousands of plan participants and beneficiaries "represents a tremendous, and tremendously unpredictable, financial undertaking." *Id.* at 25. That is "especially true" for an "employee-friendly" defined benefit plan that guarantees fixed monthly payments "irrespective of the plan's overall worth." *Id.* Moreover, "plan sponsors generally believe that the ability to . . . terminate a plan (after providing for all accrued benefits) if business conditions dictate has been and remains necessary to encourage" plan adoption. *Id.* at 26 (citation omitted). A plan sponsor, of course, is operating a business, and no "rational business person" would "adopt a plan with uncertain future costs and no ability to control them." *Id.* (citation omitted). If lawsuits like Plaintiffs' are allowed to proceed, employers will have decreased confidence in their ability to use PRTs to

terminate a defined benefit plan and, in turn, decreased incentive to sponsor "defined-benefit pension plans in the first place." *Id.* at 25.

Affirming the district court's order would make plan sponsors who engage in PRTs targets for class-action strike suits filed by "plaintiffs with weak claims to extort settlements." *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 163 (2008). Abusive ERISA litigation has flourished in part because "the prospect of discovery in a suit claiming breach of fiduciary duty is ominous, potentially exposing the ERISA fiduciary to probing and costly inquiries." *PBGC ex rel. St. Vincent Cath. Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 719 (2d Cir. 2013). That prospect "elevates the possibility that 'a plaintiff with a largely groundless claim will simply take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value.'" *Id.* (brackets omitted) (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005)). Discovery in an ERISA fiduciary-breach case ordinarily involves "probing and costly inquiries and document requests about [a fiduciary's] methods and knowledge at the relevant times." *Id.*; Chubb, *A Surprise Twist in ERISA Class Action Trends In 2025* (Feb. 2025) ("[a]verage" ERISA class action defense budget through motion for summary judgment ranges from $3.5 to $9 million).[15]

[15] https://www.chubb.com/content/dam/chubb-sites/chubb-com/us-en/business-insurance/fiduciary-liability/pdfs/0226_chubb2025fiduciaryinfographic_ada.pdf.

Such litigation also leads to higher insurance costs for ERISA fiduciaries "and hence" higher costs for "ERISA plans themselves." *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993). Employers often purchase liability insurance for their fiduciaries. *Cf.* 29 U.S.C. § 1110(b). But a recent surge in ERISA fiduciary litigation over the last decade has upended the fiduciary-insurance industry. *See* Judy Greenwald, *Litigation Leads to Hardening Fiduciary Liability Market*, Business Insurance (Apr. 30, 2021).[16] The increased litigation risk has pushed insurers "to raise insurance premiums, increase policyholder deductibles, and restrict exposure with reduced insurance limits." Daniel Aronowitz, Euclid Specialty, *Exposing Excessive Fee Litigation Against America's Defined Contribution Plans*, at 4 (Dec. 2020).[17]

Based on concerns like these, the Supreme Court has stressed that the pleading stage is an important moment for courts in ERISA class actions to "divide the plausible sheep from the meritless goats." *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014). Although the Court in *Dudenhoeffer* was specifically talking about motions under Rule 12(b)(6), the Court recently highlighted that lower courts also have other "tools at their disposal to screen out meritless claims before

[16] https://www.businessinsurance.com/Litigation-leads-to-hardening-fiduciary-liability-market/.

[17] https://www.euclidspecialty.com/wp-content/uploads/2021/04/Euclid-Specialty-Whitepaper-Exposing-Excessive-Fee-Litigation-1-1.pdf.

discovery," including, most relevantly here, dismissals based on lack of "Article III standing." *Cunningham v. Cornell Univ.*, 604 U.S. 693, 708 (2025).

Rather than open themselves up to massive class action litigation, many plan sponsors may find it safer to avoid PRTs altogether—even if a PRT would be safe and economically beneficial for everyone. Often, "[r]isk transfer transactions can help a plan sponsor reduce its pension liability and related expenses, potentially improving the overall financial position of the plan sponsor and benefiting employees in other areas of the business." Am. Academy of Actuaries, *Issue Brief: Pension Risk Transfer*, at 12 (Oct. 2016).[18] But PRTs will be much less attractive if they do not actually help plan sponsors predict their pension liabilities or optimize their business. If baseless PRT class actions are allowed to proceed into discovery, employers who bear the defense costs may choose to reduce spending on various employee benefits or even curtail investments in other areas of their business. And other employers on the sidelines may choose to forgo PRTs altogether.

None of that serves ERISA's purposes. Speculative lawsuits of this sort will not protect or otherwise vindicate the rights of retirees. They will simply impose unwarranted costs on employers and fiduciaries and interfere with decisions that would be good for participants, beneficiaries, and employees. The Court should

[18] https://actuary.org/wp-content/uploads/2017/11/PensionRiskTransfer10.16.pdf.

reject that possibility, enforce Article III's boundaries, and hold that Plaintiffs' allegations fail to adequately support constitutional standing.

CONCLUSION

For these reasons and those set forth in Defendants' opening brief, the Court should reverse the district court's order and remand with instructions to dismiss for lack of subject-matter jurisdiction.

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Respectfully submitted,

/s/ Michael E. Kenneally

MICHAEL E. KENNEALLY
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000

COLLEEN A. GALLAGHER
MORGAN, LEWIS & BOCKIUS LLP
2222 Market St.
Philadelphia, PA 19103

MARIEL A. BROOKINS
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062-2000

Counsel for Amicus Curiae the Chamber of Commerce of the United States of America

CERTIFICATE OF COMPLIANCE

1. In accordance with Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that this brief complies with the type-volume limitation of Second Circuit Rules 29.1(c) and 32.1(a)(4)(A) because, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5,048 words.

2. I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, Times New Roman 14-point font.

Dated: July 21, 2026

/s/ Michael E. Kenneally
MICHAEL E. KENNEALLY